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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA  
4

5 The Daniels Family 2001 Revocable Trust,  
6 individually and on behalf of all others  
7 similarly situated,

8 Plaintiff

9 v.

10 Las Vegas Sands Corp., Patrick Dumont,  
11 Robert Glen Goldstein, Miriam Adelson as  
12 special administrator of the estate on behalf  
13 of Sheldon G. Adelson,

14 Defendants

Case No. 2:20-cv-01958-CDS-EJY

**Order Denying Motion for  
Reconsideration, Granting in Part the  
Motion to Dismiss the Second-Amended  
Complaint, and Granting Leave to File  
Supplemental Authority**

[ECF Nos. 75, 84, 103, 105]

13 This is a putative securities class-action lawsuit filed against the Las Vegas Sands  
14 Corporation (“LVS”), some of its directors and executive officers, and on behalf of individuals  
15 who purchased or otherwise acquired LVS securities between February 27, 2016, and September  
16 15, 2020. Last year, United States District Judge Gloria M. Navarro<sup>1</sup> dismissed plaintiff’s first-  
17 amended complaint in its entirety, finding plaintiff failed to meet the heightened pleading  
18 requirement under § 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) because it  
19 failed to plausibly allege false and misleading statements by omission and further failed to state  
20 claim for a § 20(a) violation of the Exchange Act by any control person. After that, plaintiff filed  
21 a motion for consideration of the dismissal order. Defendants oppose the motion. Plaintiff filed a  
22 second-amended complaint (SAC) on April 18, 2022. Defendants move to dismiss the SAC,  
23 which plaintiff opposes. Both parties also move for leave to file supplemental authority. ECF No.  
24 103 (plaintiff); ECF No. 105 (defendants). Because the supplemental authorities provided by  
25 both parties discuss relevant case law, and considering that the motion to dismiss has been  
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<sup>1</sup> This matter was administratively reassigned to me on April 13, 2022. ECF No. 76.

1 pending for more than a year, I grant both motions and consider the case law in resolving the  
2 motion to dismiss.

3 For the reasons below, I deny plaintiff's motion for reconsideration. I grant in part and  
4 deny in part defendants' motion to dismiss. Because amendment would not be futile, I also grant  
5 plaintiff leave to amend.

6 **I. Plaintiff's motion for reconsideration**

7 Plaintiff ("the Trust") seeks reconsideration of two specific findings in Judge Navarro's  
8 order dismissing the first-amended complaint (ECF No. 74), arguing that she committed clear  
9 error when she "applied the wrong legal standard to the Plaintiff's affirmative Credit and  
10 Compliance Misstatements" and "overlooked Plaintiff[]'s argument in opposition to Defendants'  
11 challenges to the internal control misstatements." ECF No. 75 at 9. Plaintiff asks that I grant  
12 reconsideration, find the "Credit and Compliance Statements" to be affirmative misstatements,  
13 and allow it to re-plead dismissed internal control statements. *Id.* at 6.<sup>2</sup>

14 Defendants oppose the reconsideration motion, asserting that Judge Navarro did not  
15 commit error in finding that plaintiff failed to plead false statements, arguing that those  
16 allegations sounded in false omissions, not affirmative misrepresentations. *See generally* ECF No.  
17 78 at 5–6, 10–15. Defendants also argue that Judge Navarro did not commit clear error in  
18 dismissing, with prejudice, alleged misstatements regarding LVS's disclosure controls and  
19 procedures. *Id.* at 4, 10.

20 *a. Legal framework*

21 Federal Rule of Civil Procedure 59(e) governs motions for reconsideration, which are "an  
22 extraordinary remedy." *Feltz v. Cox Commc'ns Cal., LLC*, 562 F. Supp. 3d 535, 539 (C.D. Cal. 2021)  
23 (quoting *Am. Unites for Kids v. Lyon*, 2015 WL 5822578, at \*3 (C.D. Cal. Sept. 30, 2015)). "[A]  
24 motion for reconsideration should not be granted, absent highly unusual circumstances, unless  
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26 <sup>2</sup> Plaintiff also seeks permission to file an SAC. One was already filed on April 18, 2022 (ECF No. 77),  
rendering this requested relief moot.

1 the district court is presented with newly discovered evidence, committed clear error, or if there  
2 is an intervening change in the controlling law.” 389 *Orange St. Partners v. Arnold*, 179 F.3d 656, 665  
3 (9th Cir. 1999) (citing *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)); *see also* LR  
4 59-1(a) (“A party seeking reconsideration under this rule must state with particularity the  
5 points of law or fact that the court has overlooked or misunderstood.”). A Rule 59(e) motion  
6 may not be used to raise arguments or present evidence for the first time when they could  
7 reasonably have been raised earlier in the litigation. *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
8 877, 890 (9th Cir. 2000).

9 *b. Discussion*

10 In her dismissal order, Judge Navarro found that plaintiff failed to plausibly allege false  
11 and misleading statements by omission in the “Credit and Compliance Misstatements” section  
12 of the first-amended complaint (FAC) because there were no allegations that the defendants  
13 had a duty to disclose the alleged unauthorized transfers. ECF No. 74 at 20–21.<sup>3</sup> Plaintiff seeks  
14 reconsideration of the order, arguing the “Credit and Compliance Misstatements” allegations  
15 were incorrectly analyzed under an omission-based theory of liability, instead of an affirmative-  
16 misrepresentations theory. *See generally* ECF No. 75. It also asks to re-plead the “internal control  
17 statements” regarding LVS’s use of junkets, which were dismissed after Judge Navarro  
18 determined that plaintiff failed to respond to defendants’ argument. ECF No. 74 at 21.

19 Plaintiff’s motion regarding the “Credit and Compliance Misstatements” is seemingly  
20 moot as a SAC has already been filed. In the interest of clarity, I nonetheless address and deny  
21 plaintiff’s requested relief. Plaintiff cannot meet its burden showing that Judge Navarro  
22 committed clear error, nor can it demonstrate that she overlooked plaintiff’s theory of liability.  
23 A review of plaintiff’s opposition to defendants’ motion to dismiss, together with a review of  
24 the FAC, shows it was unclear what theory of liability plaintiff was pursuing. Plaintiff’s  
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26 <sup>3</sup> Because Judge Navarro found that the plaintiff failed to properly allege a duty to disclose, she made no findings as to the remaining elements. ECF No. 74 at 21.

1 “Argument” section is subtitled “Material Misrepresentations or Omissions.” ECF No. 66 at 20  
2 (emphasis added). Thereafter, plaintiff argued misrepresentations and omissions  
3 interchangeably. *See, e.g.*, ECF No. 66 at 21 (“Goldstein and Adelson similarly *misled* investors  
4 when discussing LVS’s compliance and [Marina Bay Sands (MBS)’s] operating results); *id.* at 22  
5 (“Goldstein and Adelson consistently *omitted* the existence of “premium player” scheme and its  
6 effects on revenue”); *id.* at n.5 (“For this reason, LVS’s representations about the effectiveness  
7 and adequacy of its ‘disclosure controls and procedures’ were also materially *misleading*”); *id.*  
8 (“Courts have consistently recognized a duty to disclose any conduct where a failure to do so  
9 would be *misleading*”); *id.* at n.6 (“While these statements may be literally true, they remain  
10 *misleading* without full disclosure [(omission)] of LVS’s unauthorized transfer practices”).

11 The FAC similarly alleges both theories of liability interchangeably. For example, in  
12 ¶¶ 322, 351, 352, 355, and 356, the Trust alleges “misrepresentations,” but the allegations set  
13 forth in ¶¶ 177, 179, 183, 204, and 320 are deemed “misleading by omission” and “false and  
14 misleading by omission.” *See generally* ECF No. 1. Consequently—and understandably—Judge  
15 Navarro analyzed and resolved the motion to dismiss by applying the “omissions” liability  
16 standard because that was consistently alleged in the FAC. The Trust’s response to the motion  
17 to dismiss neither clarified nor specified what theory of liability it was pursuing. It was not  
18 until its motion for reconsideration was filed that plaintiff clarified that it was alleging an  
19 affirmative-misrepresentations theory. ECF No. 75 at 6–9. A motion for reconsideration may  
20 not be used to raise arguments or present for the first time evidence that reasonably could have  
21 been raised earlier in the litigation. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008).  
22 Plaintiff reasonably could have clarified its theory of liability in its opposition to defendants’  
23 motion to dismiss, but failed to do so. I therefore decline to grant the Trust’s request for  
24 reconsideration.

Further, the Trust fails to meet its burden demonstrating that it is entitled to reconsideration of the court's dismissal, with prejudice, of the FAC's allegations that MBS's disclosures were false and misleading. ECF No. 75 at 21–22. In its reconsideration motion, the Trust contends that the court erred in finding that it did not respond to defendants' arguments, claiming that it did, in fact, respond, in footnote 5 of its opposition. *Id.* at 14. In its entirety, that footnote read "For this reason, LVS's representations about the effectiveness and adequacy of its 'disclosure controls and procedures' were also materially misleading." *Id.* at 22 (citing FAC at ¶¶ 217–20). But that footnote is pure argument and fails to cite any supporting case law or binding authority. Local Rule 7-2 requires that "the deadline to file and serve any points and authorities in response to the motion is 14 days after service of the motion." LR 7-2(b). Failing to do so "constitutes a consent to the granting of the motion." LR 7-2(d). Here, as noted by Judge Navarro, the Trust failed to provide points and authorities in support of its allegations; thus, the Trust consented to the granting of defendants' motion. Judge Navarro neither overlooked the Trust's argument nor erred in dismissing those allegations with prejudice. Consequently, the Trust's motion for reconsideration and request to replead the dismissed allegations in an amended complaint are denied.

## II. The motion to dismiss the second-amended complaint [ECF No. 84]

Defendants filed a second motion to dismiss the SAC, renewing their assertion that the Trust fails to meet the heightened pleading requirement set forth in Federal Rule of Civil Procedure 9(b), and the SAC fails to: (1) plead any false and misleading statements; (2) establish scienter; and (3) plead loss causation. *See generally* ECF No. 84.<sup>4</sup>

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<sup>4</sup> As part of their motion, defendants submit a number of exhibits and request that I take judicial notice of them. ECF No. 94 at n.4. The Trust opposes this request. ECF No. 94. With limited exceptions, when ruling on a 12(b)(6) motion, a court cannot consider evidence outside the pleadings without converting the motion to dismiss into one for summary judgment and giving the opposing party an opportunity to respond. *See United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003); *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001). The exceptions to the aforementioned are: (1) documents attached to the complaint; (2) documents incorporated by reference in the complaint; and (3) matters that are judicially noticeable under Federal Rule of Evidence 201. *See Ritchie*, 342 F.3d at 907–08. With the exception of a few, the defendants' exhibits meet the second exception and I therefore considered them in resolving defendants'

1 In opposition, the Trust argues that the SAC cures the pleading deficiencies identified by  
 2 Judge Navarro's dismissal order. ECF No. 95 at 16. The Trust argues that the SAC adequately  
 3 alleges that LVS's credit statements and SOX certifications contained "affirmatively false and  
 4 misleading" statements, that defendants violated Item 105 of Regulation S-K, that it adequately  
 5 alleges scienter, and adequately pleads loss causation. *See generally id.* at 16–38.

6 Defendants contend that the Trust's opposition to the motion are contrary to its  
 7 allegations in the SAC. They assert that the SAC alleges an "illicit scheme," while the Trust's  
 8 opposition to the motion suggests that its claims are based on alleged breaches of LVS's own  
 9 internal lending standards. ECF No. 99 at 6. Defendants therefore contend that the SAC  
 10 advances no scheme or fraud that meets the heightened pleading requirements for the stated  
 11 claims. *Id.*

12 *a. Legal framework*

13 The Federal Rules of Civil Procedure (FRCP) require a plaintiff to plead "a short and  
 14 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.  
 15 8(a)(2). Dismissal is proper if the complaint lacks a "cognizable legal theory" or "sufficient facts  
 16 alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
 17 1988). A pleading must give fair notice of a legally cognizable claim, and a plaintiff must proffer  
 18 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550  
 19 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content  
 20 that allows the court to draw the reasonable inference that the defendant is liable for the  
 21 misconduct alleged." *Id.* This standard "asks for more than a sheer possibility that a defendant  
 22 has acted unlawfully." *Id.*

23  
 24  
 25 motion to dismiss the SAC. *See* Def. Exs. at ECF Nos. 85–93. But exhibits 6, 12–14, 24, 26–29, and 30–31  
 26 did not qualify under any exception and therefore were not considered in issuing this decision.  
 Accordingly, defendants' request that I take judicial notice of their exhibits is granted in part and denied  
 in part.

1 “At the pleading stage, a complaint stating claims under section 10(b) and Rule 10b-5  
 2 must satisfy the dual pleading requirements of [FRCP] 9(b) and the [Private Securities  
 3 Litigation Reform Act (PSLRA)].” *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir.  
 4 2009). Rule 9(b) requires fraud claims to be pled with particularity, “but a pleading is sufficient  
 5 under Rule 9(b) if it identifies ‘the circumstances constituting fraud so that the defendant can  
 6 prepare an adequate answer from the allegations.’” *Gottreich v. San Francisco Inv. Corp.*, 552 F.2d 866  
 7 (9th Cir. 1977) (quoting *Walling v. Beverly Enters.*, 476 F.2d 393, 397 (9th Cir. 1973)). For its claims  
 8 grounded in fraud, the SAC must allege the “who, what, where, when, and how” of the  
 9 fraudulent conduct. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

10 Further, when asserting a claim under the PSLRA of 1995, a plaintiff must plead the  
 11 element of falsity with particularity. *Zucco*, 552 F.3d at 990–91; *Metzler Inv. GMBH v. Corinthian Coll.*,  
 12 *Inc.*, 540 F.3d 1049, 1070 (9th Cir. 2008) (“The PSLRA has exacting requirements for pleading  
 13 ‘falsity.’”). The Ninth Circuit sets forth three ways for a plaintiff to establish falsity: (1) the  
 14 statement is not actually believed, (2) there is no reasonable basis for the belief, or (3) the  
 15 speaker is aware of undisclosed facts tending seriously to undermine the statement’s accuracy.”  
 16 *City of Sunrise Firefighters’ Pension Fund v. Oracle Corp.*, 2021 WL 1091891, at \*14 (N.D. Cal. Mar. 22,  
 17 2021) (quoting *City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605,  
 18 616 (9th Cir. 2017)). A plaintiff must plead specific facts to show how the statements at issue  
 19 were false. *Metzler*, 540 F.3d at 1070; *see also Ronconi v. Larkin*, 253 F.3d 423, 434 (9th Cir. 2001)  
 20 (“Plaintiffs’ complaint was required to allege specific facts that show” how statements were  
 21 false); *In re Arrowhead Pharm., Inc. Sec. Litig.*, 782 F. App’x 572, 574 (9th Cir. 2019). Moreover, to be  
 22 actionable, a statement must be false at the time it was made. *Ronconi*, 253 F.3d at 430. “The fact  
 23 that [a] prediction proves to be wrong in hindsight does not render the statement untrue when  
 24 made.” *In re VeriFone Sec. Litig.*, 11 F.3d 865, 871 (9th Cir. 1993).



At the dismissal stage, the court only considers the well-pled allegations in the plaintiff's complaint. *Twombly*, 550 U.S. at 555. Typically, when a party submits evidence outside the pleadings in a motion to dismiss, the court converts the motion to a motion for summary judgment and imposes Rule 56's standard. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). Finally, if the court grants a motion to dismiss for failure to state a claim, leave to amend should be granted unless the deficiencies of the complaint cannot be cured by amendment, rendering amendment futile. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

*b. The allegations in the SAC*

The SAC contains many of the same allegations that were set forth in the FAC, the majority of which are drawn from the LVS's Annual Reports and proxy statements filed with the SEC. For example, plaintiffs allege that the following statements contained in the LVS Annual Reports for calendar years 2015–2020, signed by defendants Adelson, Goldstein, and Dumont, were affirmatively false and misleading:

1. "We extend credit to those customers whose level of play and financial resources warrant, in the opinion of management, an extension of credit."; and
2. "The Company extends credit to approved casino customers following background checks and investigations of creditworthiness.

ECF No. 77 at ¶ 151 (2015); ¶ 173 (2016); ¶ 188 (2017); ¶ 204 (2018); ¶ 220 (2019); ¶ 229 (1st 2020 quarterly report); ¶ 238 (2nd 2020 quarterly report). The SAC also alleges that the following certifications set forth in Form 10-k of the LVS Annual Reports by defendants Sheldon and Dumont were materially false and misleading:

1. "Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;" and
2. "Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;" and



3. “The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting . . . ;”<sup>5</sup>
4. “All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information”; and
5. “Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.”

*Id.* at ¶ 155 (2015); ¶ 177 (2016); ¶ 192 (2017); ¶ 208 (2018); ¶ 224 (2019); ¶ 233 (1st 2020 quarterly report); ¶ 242 (2nd 2020 quarterly report).

The Trust alleges that these were material misrepresentations because MBS’s practice of extending credit to “subprime clientele created heightened risks of collectability and write-offs” and that “the truth concerning LVS’s credit extension and compliance policies would have altered the total mix of information available to investors.” *Id.* at ¶ 154 (2015); ¶ 176 (2016); ¶ 191 (2017); ¶ 207 (2018); ¶ 223 (2019); ¶ 232 (1st 2020 quarterly report); ¶ 241 (2nd 2020 quarterly report).

The SAC further alleges that defendant Goldstein’s 2016 responses to questions about LVS’s compliance practices were materially false and misleading. *See id.* at ¶¶ 159–65. For example, in March 2016, when Goldstein responded “no” to questions about whether there were compliance vulnerabilities (*see id.* at ¶ 160), the Trust alleges that rendered the following statement materially false and misleading:

We’re very much asked the question where does it come from, who are you, how do you get credit, how do you – if a person wants a line of credit or wants to move money, we’re probably the first line of defense. In fact, I think we’re more aggressive than the government in terms of monitoring that. We’re a big believer that compliance is critical. We’ve embraced it the last 4 years, 5 years, and we don’t fear it. We embrace it, accept it. It’s part of our world today[.]

*Id.* at ¶ 216.

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<sup>5</sup> The SAC does not allege “The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting...” was a misleading statement for the 2019 Annual Report, the 1<sup>st</sup> quarter of 2020 (1Q20), and 2<sup>nd</sup> quarter of 2020 (2Q20).

1 The remaining allegations in the SAC discuss the revelations regarding the money  
 2 transferring scheme which surfaced through various news reports and articles (*see generally id.* at  
 3 ¶¶ 246–65), the Wang Xi lawsuit and unauthorized transfer claims (*id.* at ¶¶ 269–82), and LVS’s  
 4 compliance board and assertions of scienter. ECF No. 95 at 34–35.

5 *c. The parties’ arguments*

6 1. Defendants’ argument in support of their motion to dismiss the SAC

7 Defendants argue that the Trust fails to plausibly allege a scheme of unauthorized  
 8 transfers and that the allegations of “premium player scheme” are neither “widespread” nor  
 9 “illicit.” ECF Nos. 84 at 18; 99 at 8. They contend that gambling regulations in Singapore  
 10 permitted MBS to extend credit to foreign patrons directly, whether or not there were funds in  
 11 their patron accounts. ECF No. 84 at 18. Thus, while an internal investigation revealed that there  
 12 were around 3,000 letters of authorization between 2013 and 2017, the defendants argue that the  
 13 Trust fails to allege that the transfers were unauthorized. *Id.* Instead, the Trust alleges that 26%  
 14 of the aforementioned transfers were conducted using pre-filled or pre-signed authorization  
 15 forms, which it contends stemmed from employees taking shortcuts to complete the transfers.  
 16 *Id.* at 19. The defendants also characterize as conclusory the allegations that the alleged “scheme”  
 17 continued through calendar years 2019 and 2020, arguing that such allegations are contradicted  
 18 by others in the SAC. *Id.* Finally, defendants contend that the alleged “scheme” contributed to  
 19 “bad debt” write offs, but the Trust fails to allege any financial impact or consequences based on  
 20 the alleged scheme. *Id.*

21 2. The Trust’s opposition to the motion

22 In opposition to the motion to dismiss, the Trust alleges that the defendants engaged in  
 23 the unauthorized transfer scheme to increase gambling wagers by qualifying more players for  
 24 credit. *See generally* ECF No. 77. It contends that the scheme—together with false and misleading  
 25 statements made to investors—caused LVS’s stock to decrease, ultimately harming the Trust  
 26 and the class. *See generally id.* The Trust contends that the SAC sets forth how the scheme

1 worked. *Id.* at ¶¶ 100–02. It contends that the scheme was designed to circumvent money-  
 2 transfer regulations in both Singapore and China, as well as Chinese anti-money-laundering  
 3 regulations, to encourage Chinese patrons to visit Singapore and gamble. ECF No. 77 at ¶¶ 52–  
 4 53; 69–70; 92–93; 98; 102; *see also* ECF No. at 95 at 15–16. In support of its “scheme” argument, the  
 5 Trust presents allegations about the scheme from two confidential witnesses (CW-1 and CW-2)  
 6 (*see generally* ECF No. 77 at ¶¶ 106–12; ¶¶ 116–21) and alleges that an MBS patron—Wang Xi—  
 7 brought a lawsuit for misappropriating his money through the scheme. ECF No. 95 at 18–19; *see*  
 8 *also* ECF No. 77 at 9, 29, 133–34.

9       The Trust also alleges that LVS’s own investigation into MBS’s money transferring  
 10 practices was widespread. ECF No. 95 at 18–19. The investigation revealed that “of the **more**  
 11 **than 3,000 letters of authorization accounting for more than SGD \$1.4 billion in customer-**  
 12 **to-customer transfers** executed between 2013 and 2017, letters authorizing transfers for SGD  
 13 \$365 million (or more than 26%) bore signatures that appeared similar—supporting the  
 14 inference that these were likely photocopied duplicates and unauthorized transfers.” ECF No. 77  
 15 at ¶ 280 (emphasis added). This allegation suggests that the incidences of unauthorized  
 16 transfers went beyond the sole example of the Xi lawsuit. The Trust alleges that the revelation of  
 17 the scheme, the internal investigations into it, and the Xi lawsuit caused the LVS stock to fall  
 18 almost \$10.00 per share. *Id.* at 258–59; 263; 265.

19       The Trust contends that LVS’s statements in its Form 10-Ks filed during the class period<sup>6</sup>  
 20 were affirmatively false and misleading. Those statements include, but are not limited to: “LVS  
 21 ‘extend[s] credit to those customers whose level of play and financial resources warrant [] an  
 22 extension of credit” (*id.* at ¶¶ 145–49), that LVS “extend[s] credit to approved casino customers  
 23 following background checks and investigations of creditworthiness (*id.* at ¶¶ 151–52), and other  
 24 statements made by LVS executives—including Goldstein—and others. *See generally id.* The Trust  
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26 <sup>6</sup> The alleged class period is between February 27, 2016, and September 15, 2020. ECF No. 77 at ¶¶ 151–52.

1 alleges that these statements are false and misleading because MBS did not monitor or adhere to  
2 its own internal credit policies, which resulted in the unauthorized transfer scheme. ECF No. 95  
3 at 26. The Trust then addresses the specific arguments from the defendants' motion, addressing  
4 first the credit-misstatements arguments, then the SOX certifications, and finally scienter and  
5 loss causation.

6 A. Credit misstatements

7 First, the Trust contends that the defendants' argument that scheme allegations (from  
8 the SAC) occurred only at MBS and no other part of LVS fails because MBS is not specifically  
9 named. The Trust contends that this is "nonsense," and urges that the allegations related to the  
10 credit-based wagering at LVS were related to business in Macao, Singapore, and the United  
11 States. ECF No. 95 at 27. The Trust further maintains that defendants' argument—that the  
12 statement (that LVS "extend[s] credit to those customers whose level of play and financial  
13 resources warrant [] an extension of credit") was not false or misleading because defendants  
14 made no "guarantees of the absence of risk"—is unconvincing because the statement was not a  
15 warning but an "affirmative statement of fact" regarding the company's lending policies. *Id.*  
16 Next, the Trust argues that defendant Goldstein's March 10, 2016, statement (*see* ECF No. 77 at  
17 ¶¶ 159–65) was not "puffery," as argued by defendants, because he "used specific and concrete  
18 language to explain LVS's monitoring of compliance with governmental regulations" and made  
19 statements about the strength of LVS's credit policies. ECF No. 95 at 28. The Trust argues that  
20 affirmative statements do not meet the definition of "puffery." *Id.* (citing *Ferreira v. Funko Inc.*, 2021  
21 WL 880400, at \*12 (C.D. Cal. Feb. 25, 2021) (defining puffery as "vague or merely optimistic  
22 language that is 'not capable of objective verification'")). Fourth, the Trust argues that the  
23 defendants' challenges to the CWs' allegations fail because defendants incorrectly argue,  
24 without supplying authority, that because the CWs were not employed at MBS during or for the  
25 entire class period, their allegations cannot be considered by this court. *Id.* at 29. The Trust  
26 further proffers that defendants' attempts to attack the credibility of the CWs are irrelevant and

1 are based on a misunderstanding of what information the CWs are providing in support of the  
2 SAC. *Id.* at 29–30. It also defends that the information supplied by the CWs is not conclusory. *Id.*  
3 Last, the Trust contends that the unauthorized transfer scheme was not immaterial, as the  
4 amount of the fraudulent transfers was at least SGD \$365 million. ¶¶ 104–05.

5 B. SOX certifications

6 The Trust contends that LVS’s Form 10-Ks and Form 10-Qs were false and misleading  
7 because they contained the following statements:

8 “this report does not contain any untrue statement of material fact” and “the  
9 financial statements, and other financial information in this report, fairly  
10 present in all material respects the financial condition, results of operations  
and cash flows of the Company.”

11 ECF No. 77 at ¶¶ 155, 177, 192, 208, 224, 233, 242. The Trust contends that these certifications  
12 were affirmatively false and misleading when made because they falsely represented compliance  
13 with LVS’s internal credit and lending practices. It also argues that LVS’s own actions  
14 demonstrate the falsity of the certifications because, by 2018, it was agreeing to implement new  
15 control procedures, and then after the Xi lawsuit, it acknowledged “weaknesses” in its control  
16 measures. ECF No. 95 at 32. The Trust also argues that defendants’ representations that they  
17 had disclosed all internal control weaknesses, deficiencies, and any “fraud” was affirmatively  
18 false and misleading because they failed to disclose the unauthorized transfer scheme. *Id.* at 33.  
19 The Trust’s position is that defendants had an affirmative duty to disclose the information about  
20 the scheme. *Id.* The Trust argues that defendants misstate the “scope and application” and their  
21 SOX disclosures by claiming they only apply to LVS’s internal controls over financial reporting.  
22 The Trust alleges that the SOX certifications about the LVS’s internal controls apply to *all*  
23 disclosures made in the Form-10K, not just financial statements, and their failure to disclose the  
24 scheme—which it contends was a material risk—constitutes violations of Item 105 of  
25 Regulation S-K. *Id.* at 33–34.  
26

1           d.       Analysis

2           Taking the Trust's allegations in the SAC as true, I find that it sufficiently alleges a  
 3 scheme of unauthorized transfers. I make this as an independent determination. The Trust  
 4 contends that a scheme was already found by Judge Navarro and therefore under the "law-of-  
 5 the-case" doctrine, this determination cannot be disturbed. ECF No. 95 at 21–22. The Trust  
 6 misapprehends application of that doctrine to motions to dismiss. The law-of-the-case doctrine  
 7 states that the decision on a legal issue by the same or a superior court must be followed in all  
 8 subsequent proceedings in the same case. *Planned Parenthood of Cent. & N. Ariz. v. Arizona*, 718 F.2d  
 9 938, 949 (9th Cir. 1983). Once a plaintiff elects to file an amended complaint, the new complaint  
 10 is the only operative complaint before the district court. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262  
 11 (9th Cir. 1992) ("[A]fter amendment the original pleading no longer performs any function and  
 12 is treated thereafter as non-existent[.]" (internal quotation marks omitted)). Thus, when an  
 13 original complaint is dismissed, the filing of an amended complaint does not seek the court's  
 14 reconsideration of its analysis of the initial complaint (*Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d  
 15 1035, 1043 (9th Cir. 2018)), but it does raise a new set of legal issues within the amended  
 16 pleading for the court's consideration. The amended complaint is a new complaint, entitling the  
 17 plaintiff to judgment on that complaint's merits. *Id.* LVS's internal investigation revealing the  
 18 scope and duration of the transfers alone supports this finding. That said, the SAC goes beyond  
 19 the investigation and sets forth additional allegations in support of the scheme—including, but  
 20 not limited to—the Xi lawsuit and information provided by two confidential witnesses. I thus  
 21 evaluate whether the SAC sets forth violations of Sections 10(b) and 20(a) of the Exchange Act,  
 22 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 of the Exchange Act.

23           In order to establish a violation of Section 10(b) of the Exchange Act and Rule 10b-5(b)<sup>7</sup>,  
 24 the Trust must allege that a defendant, in connection with the purchase or sale of a security: (1)

25 \_\_\_\_\_  
 26 <sup>7</sup> Rule 10b-5 prohibits the use of "any device, scheme, or artifice to defraud" in the offer or sale of securities. 15 U.S.C. § 77q(a)(1); 17 CFR § 240.10b-5(a).

made a material misrepresentation or omission; (2) with scienter; (3) in interstate commerce. See 17 C.F.R. § 240.10b-5(b); *see also SEC v. Platforms Wireless Internet Corp.*, 617 F.3d 1072, 1092 (9th Cir. 2010). This offense is also subject to the heightened pleading requirement—regarding fraud—of FRCP 9(b). Thus, in order to satisfy Rule 9(b), a pleading must identify ‘the who, what, when, where, and how of the misconduct charged,’ as well as ‘what is false or misleading about [the purportedly fraudulent] statement, and why it is false.’” *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010)); *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994) (en banc) (requiring that the complaint state “what is false or misleading about a statement, and why it is false”), superseded by statute on other grounds, PSLRA of 1995, 15 U.S.C. § 78u-4(b)(1), as recognized in *Ronconi v. Larkin*, 253 F.3d 423, 429 n.6 (9th Cir. 2001).

A statement is false or misleading if it “directly contradict[s] what the defendant knew at that time” or “omits material information.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1008–09 (9th Cir. 2018). In determining whether a statement is misleading, the court applies the objective standard of a “reasonable investor.” *In re Alphabet, Inc. Sec. Litig.*, 1 F.4th 687, 699 (9th Cir. 2021). A fact is material if there is a “substantial likelihood” that a reasonable investor would consider it important in his or her decision making. *Basic Inc. v. Levinson*, 485 U.S. 224, 231 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Thus, to meet the materiality requirement, “there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” *Id.* at 231–32 (citation omitted). Stated otherwise, “materiality depends on the significance the reasonable investor would place on the withheld or misrepresented information.” *Id.* at 240; *see also United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991) (materiality depends on the significance a reasonable investor would have placed on the withheld or misrepresented information).



1 The stated class period runs from 2016 to 2020. ECF No. 77 at ¶¶ 151–52. Evaluating the  
 2 SAC within that timeframe, an immediate issue arises regarding the alleged false or misleading  
 3 statements for years 2016 to 2018. According to the SAC, it was until late 2017—at the earliest—  
 4 that Hogan Lovells was retained to conduct an internal investigation into the unauthorized  
 5 transfer scheme. ECF No. 77 at ¶ 31. And, per the SAC, the results of that investigation were not  
 6 made known until an unknown date in 2018. *Id.* at ¶ 31. The Trust does not address how,  
 7 without more, this court should find that the credit or SOX statements from 2016, 2017, and  
 8 2018 were either false or misleading, if it is unclear when the defendants discovered the scheme  
 9 that could have potentially rendered the statements false or misleading at all.

10 Based on a plain reading of the SAC for the years 2016 to 2018, there is no information  
 11 about precisely *when* or *which* defendants learned about the scheme to render statements false and  
 12 misleading. “Under the PSLRA’s heightened pleading instructions, any private securities  
 13 complaint alleging that the defendant made a false or misleading statement must: (1) ‘specify  
 14 each statement alleged to have been misleading [and] the reason or reasons why the statement is  
 15 misleading,’ 15 U.S.C. § 78u–4(b)(1); and (2) ‘state with particularity facts giving rise to a strong  
 16 inference that the defendant acted with the required state of mind,’ § 78u–4(b)(2).” *Tellabs, Inc. v.*  
 17 *Makor Issues & Rts., Ltd.*, 551 U.S. 308, 321 (2007); *In re Metawave Commc’ns Corp. Sec. Litig.*, 629 F.  
 18 Supp. 2d 1207, 1214 (W.D. Wash. 2009) (citing Rule 10b–5. 15 U.S.C. § 78u–4(b)(2)’s  
 19 requirement to plead “**with particularity** facts giving rise to a strong inference that the  
 20 defendant acted with the required state of mind,” and must do so for “each act or omission  
 21 alleged to violate.”) (emphasis added)). The SAC makes one general allegation of knowledge of  
 22 the scheme by other persons employed at MSB, not by the defendants. This is not enough. *See*  
 23 *Vess*, 317 F.3d at 1107 (“[T]he circumstances constituting the alleged fraud [must] be specific  
 24 enough to give the defendants notice of the particular misconduct . . . Averments of fraud must  
 25 be accompanied by the who, what, when, where, and how of the misconduct charged.” (cleaned  
 26 up)). The Xi lawsuit and the CWs offer no additional allegations that would address the

1 knowledge issue. The Xi lawsuit addresses transfers that happened before the alleged class  
2 period. ECF No. 77 at ¶ 134 (“According to Xi, the amount was pilfered from his account through  
3 22 separate transactions made between October and December 2015[.]”). And the SAC’s only  
4 allegation that upper management at MSB was aware of the scheme is set forth at paragraph 147,  
5 which states that CWs 1 and 2 “observed [the] transfers routinely during their employment at  
6 MBS between 2013 and 2016 and discussed them at various high-level meetings with LVS’s  
7 Global Chief Compliance Officer, MBS’s Chief Financial Officer, senior compliance personnel,  
8 and representatives from legal, including Deputy General Counsel Penny Lo, and Daphne Hearn  
9 who served as MBS’s Chief Compliance Officer.” *Id.* at ¶ 147. But the allegation does not  
10 sufficiently address the “what . . . when, and how” the transfers were discussed to meet the  
11 PSLRA pleading requirement for the relevant class period.

12 But the allegations pertaining to 2019 and 2020 are different. The SAC alleges that by  
13 then, defendants, in fact, knew about the scheme; their knowledge is evidenced by their own  
14 internal investigation and subsequent report and the Xi lawsuit. By 2019, LVS was aware of the  
15 Xi lawsuit and its disclosure accompanied a decline in LVS’s stock price. *Id.* at ¶ 247. And by  
16 2020, there were news reports regarding the Xi lawsuit and the transfer scheme, which resulted  
17 in another drop in the LVS stock price. *See generally id.* at ¶¶ 249–65. As a result, I find that the  
18 Trust satisfies the first prong of establishing a violation of Section 10(b) of the Exchange Act and  
19 of Rule 10b-5(b). That is, the Trust sufficiently alleges that defendants made a material  
20 misrepresentation or omission when they certified that material aspects of the company’s  
21 financial conditions and any significant deficiencies and material weaknesses with internal  
22 controls had been disclosed. *See generally id.* at ¶¶ 212–45. Taking the allegations and inferences  
23 into account, the SAC sufficiently alleges that defendants’ 2019 and 2020 credit-and-internal-  
24 controls statements were material and that there was “substantial likelihood” that a reasonable  
25 investor would consider that information important in his or her decision making. *Basic Inc.*, 485  
26 U.S. at 231.

1 I also find that the SAC establishes scienter for years 2019 and 2020. In a securities-fraud  
 2 case, scienter can be established if a defendant had “a mental state embracing intent to deceive,  
 3 manipulate, or defraud.” *Hollinger v. Titan Cap. Corp.*, 914 F.2d 1564, 1568 (9th Cir. 1990) (quoting  
 4 *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n.12 (1976)). The Ninth Circuit has held that  
 5 “recklessness” is sufficient to satisfy the scienter requirement. *Id.* at 1568–69; *SEC v. Glob. Express*  
 6 *Capital Real Estate Inv. Fund, I, LLC*, 289 F. App’x 183, 187 (9th Cir. 2008); *see also Nelson v. Serwold*,  
 7 576 F.2d 1332, 1337 (9th Cir. 1978) (knowledge or recklessness is required for a finding of  
 8 scienter under § 10(b)). Reckless conduct has also been described as conduct that demonstrates  
 9 “an extreme departure from the standards of ordinary care, and which presents a danger of  
 10 misleading buyers or sellers that is either known to the defendant or is so obvious that the actor  
 11 must have been aware of it.” *Hollinger*, 914 F.2d at 1569 (quoting *Sundstrand Corp. v. Sun Chem. Corp.*,  
 12 553 F.2d 1033, 1045 (7th Cir. 1977), *cert. denied*, 434 U.S. 875 (1977)).

13 When reviewing a complaint for scienter, the court considers “all reasonable inferences  
 14 to be drawn from the allegations, including inferences unfavorable to the plaintiffs.” *Metzler*, 540  
 15 F.3d at 1061. Further, to plead a strong inference of scienter, the complaint must set forth  
 16 particularized facts revealing that the individual defendants knew the supposedly false  
 17 statements challenged by the plaintiffs were false or misleading when made or had access to  
 18 information establishing that the individual defendants were deliberately reckless in allowing  
 19 the false statements to be made. *See id.* at 1068. For 2019 and 2020, the SAC sufficiently alleges  
 20 that defendants knew of the transfer scheme and the deficiencies in its internal controls. And by  
 21 2020, the SAC alleges that they knew that those issues emerged when the stock price dropped.  
 22 These allegations are enough to establish falsity, scienter, and loss causation.<sup>8</sup>

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24 <sup>8</sup> Loss causation is “a variant of proximate cause,” and turns on “whether the defendant’s misstatement, as  
 25 opposed to some other fact, foreseeably caused the plaintiff’s loss.” *Lloyd v. CVB Financial Corp.*, 811 F.3d  
 26 1200, 1210 (9th Cir. 2016) (loss causation sufficiently pled when share price fell 22% and never  
 recovered). The central inquiry is whether a plaintiff’s loss was caused by “the very facts about which the  
 defendant lied.” *Mineworkers’ Pension Scheme v. First Solar, Inc.*, 881 F.3d 750, 753 (9th Cir. 2018) (per curiam)  
 (citation omitted).

1 *e. Leave to Amend*

2 When dismissing a complaint for failure to state a claim, a court should grant leave to  
3 amend “unless it determines that the pleading could not possibly be cured by the allegation of  
4 other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Although the court has determined  
5 that the Trust fails to state a claim for years 2016–2018 of the alleged class period, there is a  
6 possibility that the Trust can cure its allegations. Accordingly, because the Trust may salvage its  
7 claims related to those years, I find that amendment would not be futile. The Trust’s claims are  
8 therefore dismissed in part, but with leave to amend. The Trust is advised that this will be its  
9 final opportunity to amend its pleading.

10 **III. Conclusion**

11 Taking as true all material allegations in the complaint, along with all reasonable  
12 inferences to be drawn from them and construing the complaint in the light most favorable to  
13 the Trust, I find that the allegations set forth in the SAC for the years of 2019 and 2020 are  
14 enough to survive dismissal.

15 IT IS HEREBY ORDERED that plaintiff’s motion for reconsideration [ECF No. 75] is  
16 DENIED.

17 IT IS FURTHER ORDERED that plaintiff and defendants’ motions to file supplemental  
18 authority [ECF Nos. 103, 105] are GRANTED.

19 IT IS FURTHER ORDERED that defendants’ motion to dismiss the second-amended  
20 complaint [ECF No. 84] is GRANTED in part and DENIED in part. It is granted as to the  
21 allegations pertaining to 2016 to 2018. Should the Trust choose to file an amended complaint, it  
22 must do so by August 30, 2023. The Trust may not add new claims or parties without leave of  
23 the court or joint stipulation by the parties under FRCP 15.

24 DATED: August 7, 2023

25   
26 Cristina D. Silva  
United States District Judge